

[95-ERA-12 Hamlett v. Babcock & Wilcox Company](#), 95-ERA-12 (ALJ May 15, 1995)

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IN THE MATTER OF

Date Issued: May 15, 1995

PATRICIA L. HAMLETT

Complainant

Case No.

95-ERA-12

v.

BABCOCK AND WILCOX COMPANY

Respondent

RECOMMENDED ORDER APPROVING SETTLEMENT

This matter arises under the provisions of the Energy Reorganization Act of 1974 as amended, 42 U.S.C. §§5801 et seq. (1982) (the Act); Employee Protection §5851; Implementing Regulations in 29 C.F.R. Part 24.

Patricia L. Hamlett, Complainant, filed a complaint against Babcock and Wilcox Company, Respondent, in which she alleged that her employment was terminated for engaging activities protected by the Act. The Respondent denied the charge, and responded that Ms. Hamlett was terminated for cause unrelated to activities within the coverage of the Act.

The case was tried on the merits on April 11, 1995, at Lynchburg, Virginia. Both parties presented evidence, testimonial and documentary, and they were given the opportunity to examine and cross examine witnesses. Each side requested and was given time within which to file briefs on the issues. However, at some point after the trial, they entered into settlement negotiations. On May 15, 1995, the parties filed a settlement agreement, and they jointly moved for approval of their agreement.

It is my duty to examine the settlement agreement for fairness, adequacy, and reasonableness, and recommend a course of action to the Secretary of Labor, United States Department of Labor. I conducted my evaluation of the settlement from the perspective of knowing and understanding the respective claims, having heard and observed the respective witnesses, and their demeanor. In my view, the outcome of the litigation is far from certain: there are equities on both sides of the case, and, as I see it, both parties are at risk. I believe that the parties

understand this, and were moved to settlement by the realities of litigation. On consideration of the contentions of the parties, the evidence supporting their positions, and the applicable law, I conclude that the settlement is fair, adequate and reasonable.

The parties agreed to mutual releases of all causes of action arising out the facts in this case, but the agreement expressly excludes rights or claims that may arise after the date of the agreement. See, *Pace v. Kirshenbaum Investments*, 92 CAA 8 (Sec'y Dec. 2, 1992). While the agreement provides for interpretation, and enforcement of the agreement in accordance with the laws of the Commonwealth of Virginia, the authority of the Secretary of Labor to seek, or grant appropriate relief under the Act is not limited by the agreement. See, *Pace*,.

Finally, in consideration of their agreement, the parties request that the case be dismissed with prejudice. I find this a proper final disposition of the case.

RECOMMENDATION

For the reasons stated, I recommend that the Secretary of Labor approve the settlement agreement of the parties, and dismiss this case with prejudice.

GEORGE A. FATH
Administrative Law Judge

NOTICE: This Recommended Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210. The Office of the Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).